



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/23/1870

Property : 2 The Quadrant, Penicuick, Midlothian EH26 8AU (“Property”)

Parties:

Croft Apartments Ltd, The Cottage, Pencaitland, East Lothian EH34 5DL (“Applicant”)

Gregor Fortune Property Ltd, Suite 27 Bonnington Bond, 2 Anderson Place, Edinburgh EH6 5NP (“Applicant’s Representative”)

Charlene Duke, 2 The Quadrant, Penicuick, Midlothian EH26 8AU (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“Tribunal”) determined to make an order for possession of the Property.

Background

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: Private Residential Tenancy Agreement dated 4 June 2019; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 (“Act”) dated 27 February 2023 (“Notice to Leave”); Royal Mail proof of delivery on 28 February 2023; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 with covering email dated 7 June 2023; emails from Warner’s Solicitors dated 23 February 2023 and 9 June 2023 regarding the sale of the Property; email from the Applicant to the Applicant’s Representative dated 22 February 2023 regarding the sale of the Property and sheriff officer’s execution of service certifying service of the Application on 24 August 2023.

Case Management Discussion

A case management discussion (“CMD”) took place before the Tribunal on 28 September 2023 by teleconference. The Applicant was in attendance represented by Raonaid Cobban (director of the Applicant) along with Gregor Fortune of the Applicant’s Representative. The Respondent was not in attendance.

The Tribunal noted that the landlord in terms of the tenancy agreement was the Applicant who also held title to the Property but the landlord in the Notice to Leave was described as being Raonaid Cobban. Ms Cobban told the Tribunal that she is the main director of the Applicant and that she deals with management of the Property herself. The Tribunal asked if there had been contact with the Respondent since service of the Notice to Leave. Mr Fortune said that he had been in touch with the Respondent to arrange a check out of the Property on expiry of the Notice to Leave. He said that the Respondent told him she was in touch with the local authority about alternative accommodation. Mr Fortune said that the Respondent understood the meaning of the Notice to Leave.

Mr Fortune told the Tribunal that the Respondent lives in the Property with three children, one aged around eighteen and two of school age. He was not aware of any vulnerabilities or disabilities. He said that the Respondent was employed when she took on the tenancy but had been in and out of work during the tenancy. He said that the rent had been paid on time since November 2021 and that the Respondent had been a good tenant.

Mr Fortune told the Tribunal that the Applicant owns three other properties in central Edinburgh which are all one bedroom apartments. He said that Ms Cobban is 77 and has type 2 diabetes which impacts her eyesight. He said that she was anxious about driving to Penicuik because of that whereas she could use public transport to manage the properties in central Edinburgh. He said the Applicant wished to sell the Property to release equity to assist planning for the future.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement for the Property dated 4 June 2019.
2. A Notice to Leave was served on the Respondent by recorded delivery post on 28 February 2023. It stated that an application for an eviction order would not be submitted to the Tribunal before 25 May 2023.

3. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 7 June 2023.
4. The Applicant holds title to the Property and is entitled to sell the Property.
5. The Applicant intends to sell the Property or at least put it up for sale within 3 months of the Respondent ceasing to occupy it.

Reasons for the Decision

Although the Notice to Leave wrongly described the landlord as being Raonaid Cobban, the Tribunal determined that this error did not materially affect the effect of the document as described in Section 73 of the Act. The Tribunal proceeded to determine to make an Order for possession of the Property in terms of Section 51 of the Act.

In terms of section 51 of the Act, the First-tier Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

In the Application the Applicant stated that they sought recovery of possession of the Property on the basis set out in Ground 1 which is that the landlord intends to sell. The evidence lodged with the application of intention to sell was a copy of emails from Warner's Solicitors dated 23 February 2023 and 9 June 2023 regarding the sale of the Property and an email from the Applicant to the Applicant's Representative dated 22 February 2023 regarding the sale of the Property. The Tribunal considered the evidence provided and determined that the ground for eviction had been established. The Tribunal considered the oral representations of the Applicant and, in the absence of a submission from the Respondent, determined that it was reasonable to grant an order for eviction.

Decision

The Tribunal determined to grant an order for possession of the Property.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Legal Member



Date: 28 September 2023